Item No. 108-D

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96TH CONGRESS, 2d Session } HOUSE OF REPRESENTATIVES { REPT. 96-1386 Part 2

AUTHORIZING THE SECRETARY OF AGRICULTURE TO CONVEY CERTAIN NATIONAL FOREST SYSTEM LANDS, AND FOR OTHER PURPOSES

SEPTEMBER 26, 1980.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

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Mr. UDALL, from the Committee on Interior and Insular Affairs, submitted the following

COMPLETED
ORIGINAL

REPORT

[To accompany H.R. 6257]

[Including the cost estimate of the Congressional Budget Office]

The Committee on Interior and Insular Affairs, to whom was referred the bill (H.R. 6257) to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows.

Page 1, line 3, strike all after the enacting clause and insert the following:

That the Secretary of Agriculture, referred to in this Act as the "Secretary", is authorized, when the Secretary determines it to be in the public interest, (1) to sell or exchange, by quit-claim deed, all right, title and interest of the United States in and to National Forest System lands described in Section 2; and (2) to accept, as consideration for the lands sold or exchanged, other lands, interests in lands, or cash payment, or any combination of such forms of consideration, equal in value to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary. The Secretary shall insert in any such quit-claim deed such terms, covenants, conditions and reservations as the Secretary deems necessary to ensure protection of the public interest, including protection of the scenic, wildlife and wilderness values of the National Forest System and provision for appropriate public access to and use of lands within the System.

SEC. 2. The National Forest System lands which may be sold or exchanged under this Act are those the sale or exchange of which is not practicable under any other authority of the Secretary and which are, (1) parcels of 40 acres or less which are interspersed with or adjacent to mineral patents, are determined by the Secretary through appraisal within one year before or after the date application for sale or exchange is made to the Secretary, of not more than $150,000; (2) parcels of five acres or less which are encroached upon by improvements occupied or used under claim or color of title by persons to whom no advance notice was given that the improvements encroached or would encroach upon such

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parcels, and who in good faith relied upon an erroneous non-Federal survey, title search or other land description indicating that there was not such encroachment; and (3) road rights-of-way reserved or acquired which are substantially surrounded by lands not owned by the United States and which are no longer needed by the United States.

SEC. 3. Any person (including any State, local or municipal government) to whom lands are conveyed pursuant to this Act shall bear all reasonable costs to administration, survey and appraisal incidental to such conveyance, as determined by the Secretary, except in those cases in which the Secretary determines that it would be consistent with the public interest to waive payment of such costs by such person. In the case of road rights-of-way conveyed pursuant to this Act, the person to whom the right-of-way is conveyed shall reimburse the United States for the value of any improvements to such right-of-way which may have been made by the United States.

SEC. 4. Conveyance of any road rights-of-way under this Act shall not be construed as permitting any designation, maintenance or use of such rights-of-way for road or other purposes except to the extent permitted by State or local law and under conditions imposed by such law.

SEC. 5. The Secretary shall issue regulations to carry out the provisions of this Act, including specification of (1) criteria which shall be used in making the determination as to what constitutes the public interest; and (2) factors relating to location or size which shall be considered in connection with determining the lands to be sold or exchanged under section 2(1).

SEC. 6. Nothing in this Act shall authorize conveyance of Federal lands within the National Wilderness Preservation System.

PURPOSE

The purpose of H.R. 6257 by Representative Weaver is to increase the flexibility of the Secretary of Agriculture in managing the national forests by allowing him to transfer out of federal ownership certain limited categories of national forest lands, without the necessity of seeking case-by-case authorization from the Congress.

BACKGROUND AND NEED

The bill would authorize sale or exchange of national forest lands in three categories, (1) irregularly shaped tracts of 40 acres or less among mineral patents which cannot be practically administered; (2) tracts of five acres or less which are innocently occupied by private parties because of surveying or title errors; and (3) road rights-of-way owned by the United States in fee but which are no longer needed. In consideration for the lands sold or exchanged, the Secretary may accept either cash payment, lands, or interest-in-lands equal to the fair market value of the lands sold or exchanged. Any mineral interests would be recognized in determination of value. Lands received in exchange would become national forest system lands.

The committee has been informed that an estimated 200,000 of the isolated tracts, which the bill would make eligible for disposition, exist in the national forest system. Many of these were created during the late 19th and early 20th centuries through patenting of mining claims on the public lands in the West, leaving residual Federal lands in tracts of varying sizes and shapes. The committee also has noted that some 50,000 title cases involve survey errors or errors in property descriptions which have caused private property owners to encroach upon the public lands, while still other similar situations were created through right-of-way exceptions from patents to homesteaders or by acquisitions of rights-of-way for use as public roads for access to public

lands, even though many of the roads no longer exist or were never constructed. In general, the various tracts dealt with by this bill are usually of irregular shape; many lack definite and readily identifiable boundaries. The mining claim and road right-of-way tracts are either nearly surrounded by or are enclaves within private lands.

As amended, the bill will reduce the need to issue temporary special use permits for unauthorized occupancy; provide broader exchange authority to facilitate disposal of those tracts more economically and expeditiously; reduce the miles of property boundary between Federal and private lands, thus reducing establishment and maintenance costs; reduce the number of bills which may be presented to the committee and the Congress for private relief; provide equitable relief to many private land owners who unknowingly encroach on national forest lands; and provide authority to properly administer federally owned land in and around mining claim areas.

THE COMMITTEE AMENDMENT

To assure that this legislation would be confined to those essentially *de minimis* cases for which it is most suitable, the committee's amendment in the nature of a substitute modified the original suggestions of the administration in several ways. It imposes a $150,000 "cap" on the value of any one small-tract parcel which would be eligible for transfer because of location among mineral claims; further, it requires that the Secretary include in the instruments of sale or other transfer any conditions which he determines to be necessary to protect the public interest and the values of the national forests and the ability of the public to use and enjoy the forests; and it includes a number of other refinements of the original bill.

SECTION-BY-SECTION ANALYSIS

Section 1 authorizes the Secretary of Agriculture (when he determines such actions to be in the public interest) (1) to sell or exchange the national forest lands described in section 2; and (2) to accept, as consideration for the lands sold or exchanged, money or other lands or combinations thereof of equal value; the section also requires the Secretary to insert in the instruments of conveyance such terms, conditions, covenants, or other reservations as he determines necessary to ensure protection of the public interest, including the protection of the scenic, wildlife, and wilderness values of the forests and to provide appropriate public access to and use of the national forest lands.

Section 2 describes the categories of land eligible for sale or exchange under section 1.

Section 3 requires that any person (including any State, local or municipal government) purchasing lands under section 1 to pay the administrative costs of the conveyance unless the Secretary (as he is authorized to do) determines that it would be in the public interest to waive such payment. This section also stipulates that persons receiving rights-of-way under the bill must reimburse the United States for any improvements thereto which are included in the conveyance.

Section 4 stipulates that conveyance of rights-of-way (no longer necessary to the United States) shall not be construed as by itself permitting any use of the right-of-way for road purposes; in short, this section makes it clear that conveyance of a right-of-way under the bill will not work to waive any State or local law regulating the designation, use, or maintenance of roads or similar facilities.

Section 5 requires the Secretary to promulgate regulations necessary to carry out the provisions of the bill.

Section 6 stipulates that nothing in the bill is to be construed as authorizing the conveyance of any federal lands which are part of the National Wilderness Preservation System.

COST AND BUDGET ACT COMPLIANCE

H.R. 6257 authorizes no appropriations, and should have no discernible impact on the Federal budget; any likely impact would probably be in the form of reduced costs. The analysis of the Congressional Budget Office follows:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, D.C., September 24, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs, U.S. House of Representatives, Longworth House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: Pursuant to Section 403 of the Congressional Budget Act of 1974, the Congressional Budget Office has reviewed H.R. 6257, a bill to authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes, as ordered reported by the House Committee on Interior and Insular Affairs, September 18, 1980.

This bill authorized the Secretary of Agriculture to sell or exchange certain small parcels of National Forest Service land. The lands involved include: parcels of 40 acres or less valued at a maximum of $150,000 which are inefficient to manage because of location or size; sites which have been innocently encroached upon due to erroneous non-federal surveys; and federally reserved road rights-of-way which are surrounded by non-federal lands and are no longer needed. Based on information from the National Forest Service, it is estimated that the value of the lands which will be sold or exchanged by the end of fiscal year 1985 is approximately $1.9 million (in current prices). Assuming the transactions occur at a percentage rate of 10/15/25/25/25 during the next five years and that 90 percent of these transactions are land sales (and 10 percent are land exchanges), receipts to the federal government resulting from enactment of this legislation will be approximately $0.2 million in fiscal year 1981, $0.3 million in fiscal year 1982, $0.6 million in fiscal year 1983, $0.6 million in fiscal year 1984, and $0.7 million in 1985. No significant net additional administrative costs to the federal government are expected to be incurred as a result of enactment of this legislation.

Sincerely,

ALICE M. RIVLIN, *Director.*

INFLATIONARY IMPACT

Pursuant to Rule XI, clause 2(l)(4) of the Rules of the House of Representatives, the Committee believes that the enactment of H.R. 6257, as amended, will have no inflationary impact on the national economy.

LEGISLATIVE HISTORY AND OVERSIGHT STATEMENT

The Subcommittee on Public Lands held a hearing on a companion bill, H.R. 7260, on May 19, 1980, and on September 19, 1980, ordered H.R. 6257 favorably referred to the full Committee after approving an amendment in the nature of a substitute. The Committee on Interior and Insular Affairs will have continuing responsibility for oversight of the implementation of this bill after its enactment, and concerning the exercise by the Secretary of the authorities granted by the bill.

COMMITTEE RECOMMENDATION

On September 23, 1980, the Committee on Interior and Insular Affairs, by voice vote, ordered H.R. 6257, as amended, favorably reported and recommends its enactment by the House.

DEPARTMENTAL REPORT

The Department of Agriculture transmitted, by letter, a draft bill on December 20, 1979. The Department of Agriculture reported by letter on H.R. 7260 on September 9, 1980. Copies of the letters are attached.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., January 23, 1980.

Hon. THOMAS P. O'NEILL,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: Transmitted herewith, for the consideration of the Congress, is a draft bill "To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes."

The Department of Agriculture recommends introduction and enactment of the draft bill.

The proposed legislation would permit the Secretary of Agriculture to convey by quitclaim deed, either by sale or exchange, certain National Forest System lands. Lands to be conveyed are restricted to those which are: (1) irregularly shaped tracts of 40 acres or less which cannot be efficiently or economically administered, (2) tracts of five acres or less which are innocently occupied because of surveying errors, or (3) road rights-of-way owned by the United States but which are no longer needed. In consideration for the lands sold or exchanged, the Secretary could accept either cash payment, lands or interest-in-lands equal to the fair market value of the lands sold or exchanged. Any mineral interests would be recognized in determina-

tion of value. Lands received in exchange would become National Forest System lands.

The tracts were created during the late nineteenth and early twentieth centuries through patenting of mining claims on the public lands in the West. The claims occurred in concentrated groups forming a broad patchwork, or they followed mineral veins or drainages resulting in a jumbled, interwoven pattern. Intermingled with the claims are residual, unpatented public lands of all sizes and shapes. Many of these fractions came under the administrative responsibility of the Forest Service upon creation of the National Forests.

Intensified land use and growing development has resulted in a large increase in problems related to these fractional ownerships. Most of the mineral patents are no longer held for their mineral values. They may support ranching, industrial plants, irrigation sites and water power facilities, utility lines, roads, and intensive recreation sites. Recently, some of the patented lands have been subdivided into vacation homesites. Because of the irregular shapes and the lack of definite and readily identifiable boundaries of the parcels, it is difficult for the public land manager to fulfill his responsibility in the administration of the intermingled Federal lands. Problems include occupancy trespass, identification of rights-of-way for access and utilities, inadvertent sales of publicly-owned fractions, and use by private developers.

Many of these fractions are of such small size or are located in a way so as to be of no practical use for National Forest System purposes. They should be transferred to private ownership. The only method presently available is by land exchange under the General Exchange Act of March 20, 1922 (42 Stat. 465, as amended; 16 U.S.C. 485–86). In most instances, the exchange will not meet the requirements of that act. Furthermore, individual exchanges are an expensive, time-consuming and impractical means to resolve the problems of fractional ownerships.

Encroachment on National Forest System lands occurs when improvements are constructed or used on a parcel of land acquired in good faith which is later found to overlap the land because of an improper property line survey or an error in the property title or land description. This frequently occurs when private lands are subdivided and sold as residential lots. The nonfederal surveys to establish the subdivision may be found to be incorrect when the adjoining Federal land boundary is later surveyed and marked. It is believed that a portion of the estimated 50,000 title claim and trespass situations that currently exist on National Forest System lands are due to good faith occupancy. The majority of these involve less than one acre.

Two means are available to handle such cases. A special use permit may be granted that, while acknowledging the occupancy, allows it to continue for a specified period. This period is usually sufficient only to amortize any improvements to the property. The permit is then cancelled and the improvements must be removed. A land exchange may be made that allows the owner to exchange other private lands for the Government lands in question. This means is not satisfactory because of the small acreages and irregular sizes and, like mineral fractions, is an expensive and lengthy process. The only alternative

available to the landowner is a private relief bill; a difficult, time-consuming, and costly process with uncertain results

A related problem pertains to the hundreds of rights-of-way through private lands that have been reserved or acquired in fee by the Government. Most of these were reserved as exceptions from patents to homesteaders and they were intended to provide for existing, planned or potential "wagon roads" serving the homesteaded areas, or to assure public access to public lands. Many of the roads no longer exist or were never constructed. The average size of these strips is two acres. Some rights-of-way were acquired in conjunction with the Civilian Conservation Corps Program. The result has been the splitting of private ownerships by a strip of Federal land which may serve no useful purpose. The Federal lands are often incorporated into the adjacent private ownerships, resulting in various types of occupancy trespass. Like the mineral fractions, these tracts cannot be effectively administered and should be transferred to private ownership.

In order to expedite the process of surveying such lands prior to conveyance, this Department is now working with the Department of the Interior on a plan to provide for expeditious completion of required surveys. We expect to have an agreement soon.

The proposed legislation would provide authority to properly administer federally-owned lands and effectively dispose of these small tracts where they are not needed for Federal purposes. It would not require additional appropriations. The proposal could result in a net savings to the Government as the expense of administering these small tracts is reduced.

The Office of Management and Budget advises that there is no objection to the presentation of this proposed legislation from the standpoint of the Administration's program.

A similar letter has been sent to the President of the Senate.

Sincerely,

JIM WILLIAMS, *Acting Secretary.*

Enclosure.

A BILL To authorize the Secretary of Agriculture to convey certain National Forest System lands, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of Agriculture, hereafter referred to as the "Secretary," is authorized when in the public interest (1) to sell or exchange, by quitclaim deed all right, title and interests of the United States to certain National Forest System lands; and (2) to accept as consideration for the lands sold or exchanged either lands, interest-in-lands or cash payment equal to the fair market value of the lands, including the mineral estate, sold or exchanged by the Secretary. The Secretary may insert in any such quitclaim deed such terms, covenants, conditions, and reservations as the Secretary deems necessary to insure protection of the public interest.

SEC. 2. The National Forest System lands to be sold or exchanged under this act are restricted to (1) parcels of land of 40 acres or less interspersed with or adjacent to mineral patents which because of location or size are not subject to efficient administration as parts of the

National Forest System, (2) tracts of five acres or less where improvements are occupied or used under a claim or color of title in good faith and which encroach upon such tracts: *Provided*, That, no advance notice was given that the improvements encroached upon such tracts, and the encroachment is the result of an error in a nonfederal survey, title search or other land description and the encroachment was not the fault of the encroaching private party: *Provided, further*, That the Secretary may require the private owner to bear all reasonable administrative and survey costs, and (3) road rights-of-way reserved or acquired which are no longer needed by the United States and may not be practical to dispose of under other authority.

SEC. 3. All lands, or interest-in-lands acquired under this Act shall become upon acquisition National Forest System lands subject to all the laws, rules and regulations applicable thereto.

SEC. 4. The Secretary may issue regulations to carry out the provisions of this Act.

DEPARTMENT OF AGRICULTURE,
OFFICE OF THE SECRETARY,
Washington, D.C., September 9, 1980.

Hon. MORRIS K. UDALL,
Chairman, Committee on Interior and Insular Affairs,
House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: As you requested, here is our report on H.R. 7260, a bill "To authorize the conveyance of certain Federal lands and the issuance of certain patents, and for other purposes."

With regard to Sections 1 and 2 of H.R. 7260, dealing with the lands of the National Forest System, the Department of Agriculture strongly recommends enactment if amended as recommended herein. Section 3 of the bill, concerning the issuance of patents to States for numbered school sections in place, pertains to activities of the Department of the Interior. We defer to that Department's views on Section 3.

H.R. 7260 would permit the Secretary of Agriculture to dispose of small tracts of public lands by sale or exchange when in the public interest. In return for the sale or exchange of these lands, the Secretary would be authorized to accept other lands, interest in lands, or cash payments equal to the fair market value of the public lands. The mineral estate would be included in the determination of fair market value. A quitclaim deed would convey title to the land and the Secretary could insert in the deed any terms, convenants, conditions, and reservations deemed necessary to protect the public interest. The bill would prohibit disposing of any public lands which are a part of the National Wilderness Preservation System.

The small tracts of public lands which would be disposed of under the provisions of H.R. 7260 are limited to three specific types: (1) irregularly shaped tracts of 40 acres or less interspersed with or adjacent to mineral patents, (2) tracts of 5 acres or less which contain improvements innocently occupied or used in trespass by private parties due to surveying or titling errors, and (3) roads rights-of-way, either reserved or acquired by the United States, which are no longer needed.

The mineral fractions are residual tracts remaining from the patenting of mineral claims in Western public lands over the last century. They are of an infinite variety of sizes and shapes due to the manner

in which patenting took place. They are of little practical use for National Forest purposes. Good faith trespass, or encroachment, upon National Forest System lands occur when improvements are constructed or are being used on a parcel of land acquired in good faith by a private party which is later found to overlap Federal land due to an improper property line survey or an error in the title or land description. This has happened when private lands adjoining public lands are subdivided and sold. The error is not determined until the public land is later surveyed and marked. The trespass would be considered good faith if the private party had no knowledge that his improvements would encroach upon the public lands. These cases generally are of small size, frequently less than 1 acre, but their numbers are great. A major portion of the estimated 50,000 title claim cases existing on National Forest System lands involve good faith trespass and occur throughout the United States. The road rights-of-way exist as narrow strips of public land through private land. Most were created as exceptions to homestead patents in order to provide access to the homesteaded area or to remaining public lands. Some were purchased by the Government in conjunction with the work of the Civilian Conservation Corps. Many of the roads no longer exist or were never built. The average size of the strips is 2 acres. They occur in the West, expecially in Montana, Wyoming, Idaho and Arizona.

These small irregularly shaped tracts of National Forest System land are usually separate, isolated units having special management problems which impair efficient administration, such as occupancy trespass, location of rights-of-way for access and utilities, and use or sometimes inadvertent sale, by private developers or adjoining owners. Present authorities, including the General Exchange Act of March 20, 1922, are not adequate to handle the unique nature of these three types of tracts. Administrative remedies, such as special use permits, do not provide a satisfactory long-term solution. H.R. 7260 would provide authority to properly administer National Forest System lands and dispose of small tracts of those lands when in the interest of the United States.

We recommend several technical and clarifying amendments to the bill. These are shown in the enclosed supplemental statement. Of major concern is use of the term "public lands". To be consistent with existing legislation it should be deleted and the term "National Forest System lands" should be used instead. We also believe the provision in section 2 regarding advance notice to persons placing improvements on Federal lands should be clarified to indicate that notification would be given before construction or occupancy of the improvements.

The bill would allow the Secretary to require the persons acquiring these tracts to pay administrative and survey costs incurred in the conveyance. No additional appropriations would be required to administer the provisions of H.R. 7260 nor would additional personnel be needed.

The Office of Management and Budget advises that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

BOB BERGLAND, *Secretary.*

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